

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company and
Commonwealth Electric Company
for Approvals Relating to the Issuance of
Rate Reduction Bonds Pursuant to G.L. c. 164, §1H

D.T.E. Docket No. 04-70

**BRIEF OF THE AGENCIES ON THE
BOSTON EDISON COMPANY AND COMMONWEALTH ELECTRIC COMPANY
PETITION**

Introduction

Massachusetts Health and Educational Facilities Authority and MassDevelopment (successor to the Massachusetts Industrial Finance Agency) (the “Agencies”), acting jointly, hereby submit the following brief supporting the RRB issuance described in the petition (the “Petition”) of Boston Edison Company and Commonwealth Electric Company (collectively referred to herein as the “Companies” and individually as a “Company”) to issue electric rate reduction bonds (“RRBs”). This brief is based on a review of (i) the Companies’ Petition, (ii) the proposed Financing Order, as revised in the Companies’ submission (the “Proposed Financing Order”) and (iii) testimony and responses to information and record requests in the proceeding.

Argument

The Agencies recommend approval of the Proposed Financing Order as it relates to matters involving the issuance of the RRBs.¹ The reasons for such recommendation are discussed below.

I. THE ROLE OF THE AGENCIES IS TO PROTECT RATEPAYERS AND TO APPROVE FINAL TERMS OF THE RRBs AND THE RELATED TRANSACTION DOCUMENTS.

A. *Protection of Ratepayers.*

The Agencies will establish the “financing entity” for the RRBs. In this capacity, the goal of the Agencies is to protect the interests of the Companies’ ratepayers, who through the payment of the transition charges are the sole source of payment for the RRBs, by:

1. Ensuring the all-in costs of issuing the RRBs are minimized given current market conditions;
2. Streamlining the administrative processes and thereby minimizing the costs of issuing the RRBs, in particular by combining the RRB issuances of both Companies; and
3. As provided for in G.L. c.164, § 1H(b)(2), providing expertise to the Department of Telecommunications and Energy (the “Department”) regarding the requirements of the Proposed Financing Order to allow for the most cost efficient structure for the issuance of the RRBs.

¹ The Agencies would note that to the extent that the Proposed Financing Order contains provisions related to any of the following matters, which are properly within the Department’s authority, the Agencies make no recommendation: (i) determination and audit of reimbursable transition costs amounts; (ii) the use of RRB proceeds by the Companies; and (iii) matters related to the termination of obligations under power purchase agreements.

B. *Approval of Final Terms of RRBs.*

The Proposed Financing Order contemplates that the Agencies will oversee the issuance of the RRBs. They will approve the final terms and conditions of the RRBs including structure, pricing, credit enhancement, certain issue costs and manner of sale, thereby protecting the interests of the ratepayers. The Agencies will also coordinate the marketing of the bonds and the procurement of bond trustees and related services, approve the Companies' selection of rating agencies, and coordinate the underwriting syndicate to minimize the all-in cost of the RRBs and associated administrative expenses.

C. *Mechanism to Capture Incidental Benefits for Ratepayers.*

The proposed structure is designed such that RTC Charge collections, together with interest earnings on the collection account and various subaccounts owned by each of the Companies' respective special purpose entities ("SPE"), will be sufficient to discharge the Total Payment Requirements of each SPE over the expected term of the transaction. Amounts remaining in the accounts (other than the capital subaccount) of an SPE after such SPE's Total Payment Requirements have been fully discharged, which include interest earnings on such accounts and excess RTC Charge collections will be released to such respective SPE in accordance with MGL c. 164, §1H(b)(7). These benefits will inure to the benefit of ratepayers through a credit to their transition charge, or if there is no transition charge, through a credit to other rates. The Proposed Financing Order ensures that any amounts which represent RTC Charge collections in excess of RRB debt service, fees and expenses and the fully funded credit enhancement reserves, at the time that the Companies each calculate a periodic RTC Charge adjustment will be incorporated in such adjustment, in accordance with MGL c. 164, §1H(b)(7). In addition, each Company, as Servicer, will make RTC Charge remittances daily to the trustees for its SPE's Debt Securities on or about the day such amounts are deemed to be collected.

II. THE PROPOSED FINANCING ORDER MEETS THE LEGAL REQUIREMENTS TO ISSUE RRBs AND CONTAINS PROVISIONS EXPECTED TO BE NECESSARY FOR THE RRBs TO ACHIEVE THE HIGHEST POSSIBLE RATINGS.

A. *Legal Validity.*

The Agencies have reviewed the Proposed Financing Order to ensure that it meets the legal requirements to issue RRBs. The Agencies believe these requirements are met.

B. *Rating Agency Requirements.*

Although it is not possible for the Agencies to compare each requirement of the Proposed Financing Order against a minimum rating agency requirement, because the rating agencies review each transaction in the aggregate, as a collection of legal, legislative, regulatory, political and credit risks, the Agencies believe that the Proposed Financing Order incorporates all known provisions necessary to achieve the highest possible credit rating and thus the lowest possible interest cost for the RRBs, based on discussions over time with the principal rating agencies involved in rating such transactions, the underwriters and the Companies and the Companies' legal counsel, and on the rating agencies' requirements for similar transactions. Based on participation in past RRB issuances by Boston Edison Company ("BECo") and Western Massachusetts Electric Company ("WMECo"), the Agencies are not aware of any provision in the Proposed Financing Order that goes beyond that required for the necessary legal opinions or which exceeds the requirements of the rating agencies in the BECo or WMECo transaction, or in rate reduction bond transactions in other states. The rating agencies will rely heavily on the irrevocable nature of both the Transition Property and the Financing Order. Some of the other factors affected by the Proposed Financing Order that the rating agencies will consider are as follows:

1. Automatic True-Up Mechanism.

The true-up mechanism provides a methodology for each of the Companies to

conduct routine periodic true-ups as required without further Department deliberation, though the Department has 15 days to ensure that the methodology was implemented correctly. This meets the rating agency requirement that true-ups be implemented automatically in a timely manner, guaranteeing timely payments to RRB holders. The possibility of more frequent than annual true-ups, if necessary, is also included in the Proposed Financing Order, thereby meeting rating agency requests.

2. Additional Credit Enhancement

The Proposed Financing Order provides additional credit enhancement mechanisms to enhance the credit ratings of the RRBs by providing a cushion to cover shortfalls in RTC Charge collections. Each Company is required to provide for an overcollateralization subaccount and a capital subaccount in amounts to be determined by the Companies with input from the rating agencies prior to the time the RRBs are priced. The reserve subaccount, which holds collections in excess of amounts needed to meet payment obligations, will provide additional cushion.

3. Credit Criteria for Third-Party Billers (“TPBs”).

The Proposed Financing Order includes criteria for consolidated billing by each TPB that meet the requirements of the rating agencies. The criteria are as follows:

(i) Minimum Qualification Standard: The Proposed Financing Order requires any TPB rated below ‘BBB’ to post a cash deposit or comparable security equal to one month’s maximum estimated collections if the TPB wishes to bill and collect transition charges. The Agencies believe that this requirement meets known rating agency requirements.

(ii) Time Frame for Remittance: The Proposed Financing Order specifies that payments due from ratepayers should be submitted by the TPB to the respective

Company within 15 days of billing, regardless of whether payments have been received by the TPB. Rating agencies suggest this procedure to facilitate tracking of payment delinquencies and ensure a clear definition of payment obligations. For example, if payment is due to a Company within 15 days of receipt by the TPB, such Company cannot determine absolutely that the TPB has met this requirement. If payment is due 15 days after billing, there is an objective standard against which to base compliance.

(iii) Reversion to Dual Billing: If a payment is not made by the TPB within the designated time frame, billing will revert to the respective Company within seven days. This requirement is consistent with rating agency requirements because it minimizes the potential impact of a TPB default.

(iv) Financial Responsibility: As noted above, a TPB is responsible for remitting transition charges to the respective Company, regardless of whether the ratepayer has paid. This requirement is consistent with rating agency requirements and will provide an incentive for the TPB to diligently pursue slow paying ratepayers and to manage work-out or default situations.

(v) True-Up Applicability: In the event of a default in the remittance of RTC Charges by a TPB, such amount will be included in the true-up calculation to the extent necessary. This requirement is consistent with rating agency requirements, ensuring that default by a major TPB will not impair the repayment of the securities.

In addition to the foregoing, the rating agencies will consider other structural factors in assigning a rating to the RRBs. Some of the other factors include requirements such as (i) a bankruptcy-remote special purpose issuer, (ii) a legal true sale and absolute transfer of the

Transition Property by each Company to its SPE, (iii) shut-off policies to induce prompt payment from customers and (iv) statutory safeguards, such as the statutory lien on the Transition Property of each of the Companies, the non-bypassability of the transition charges and the Commonwealth's pledge not to impair the RRBs.

C. *Proposed Remittance Structure.*

The Agencies agree with the proposed process by which each of the Companies will remit on or about the day such amounts are deemed to be collected to their respective SPE estimated RTC Charge collections based on a methodology satisfactory to the rating agencies to be designed by the Companies which are based on amounts billed less allowance for estimated charge-offs.

D. *Transition Charges Cap.*

The Agencies propose the Department confirm that the cap for each Company set in the Settlement Agreement and Restructuring Plan will not be subject to reduction as proposed in paragraph 63 of the draft order provisions of the Proposed Financing Order.

III. THE TRUE-UP MECHANISM PROPOSED BY THE COMPANIES FOR INCREASES IN THE RTC CHARGES MAY REQUIRE DEFERRAL OF OTHER CHARGES.

The true-up mechanism proposed by the Companies and approved by the Agencies may result in the need for the RTC Charges to increase, requiring flexibility for adjustment to the RTC Charges. The Agencies believe the mechanism proposed by the Companies for such adjustments would satisfy the rating agencies and is consistent with the Restructuring Act. The Department may adjust other components of the Companies' rates and charges by requiring the Companies to defer collection of such other rates and charges, at the carrying charge the Department deems appropriate.

IV. AGENCIES' REVIEW OF THE TRANSACTION COSTS ASSURE NO DOUBLE RECOVERY BY COMPANIES.

The Companies are entitled to recover their initial transaction costs and ongoing transaction costs as set forth in the Restructuring Act, M.G.L. c.164, § 1H(9) including costs of issuing, servicing and retiring RRBs. The Agencies have reviewed with each of the Companies its transaction costs and on-going administrative costs as follows.² Fees which have been established, negotiated or approved by the Agencies include underwriting spread, rating agency fees, printing and marketing expenses, trustee fees and trustee counsel fees, underwriters' legal fees, bond counsel fees, special counsel fees, Agencies' fees, and miscellaneous costs and expenses. The Agencies have found the above listed costs to be reasonable both in terms of the Companies' proposed transaction and by reference to the BECo and WMECo RRB issuances. It is the responsibility of the Agencies to protect the interests of ratepayers, to both assure the above listed costs are reasonable and there is no excess recovery. The Agencies will continue to review the above listed initial transaction costs proposed as part of the principal amount of the RRBs as those costs listed above are finalized at the time of issuance and will monitor the proposed recovery of the above listed costs including ongoing transaction costs included in the RTC Charges itself to confirm the Companies are not seeking or obtaining a double recovery. DTE will receive from the Companies information concerning any additional adjustments in the costs as part of the true-up mechanism.

V. DTE WILL PERIODICALLY REVIEW FINANCING ORDERS TO DETERMINE IF AMOUNT OF REIMBURSABLE TRANSITION COSTS AMOUNTS ARE ACCURATE.

G.L. c.164, §1G(a)(2) provides that DTE shall review the Companies' Financing Order

² The Agencies have not reviewed certain transaction costs, including SEC and filing fees, Companies' legal and accounting fees, and covenant amendment fees.

periodically to assure the accuracy of the reimbursable transition costs amounts. If the amount included in the Financing Order exceeds the actual amount of reimbursable transition costs amounts determined following disposition of the assets, then the Companies shall provide ratepayers with a uniform rate credit based on usage that in total equals the excess including carrying costs. Although §1G(a)(2) also allows the Companies to pay the financing entity the excess amount to redeem the RRBs, prior electric rate reduction bond transactions have not included any provision for prepayment or refunding of RRBs because it would cause purchasers of the RRBs to demand compensation for prepayment risk, resulting in higher costs to ratepayers. Therefore, the Agencies agree that the proper mechanism by which to provide ratepayers the benefit is the uniform rate credit, through whatever mechanism the Department and the Companies deem appropriate.

Conclusion

For the reasons stated above and subject to the limitations expressed in the first paragraph of the Agencies' Argument above, the Agencies believe the Department's approval of the Companies' Petition and issuance of the Proposed Financing Order will result in substantial savings to ratepayers not otherwise available.

Respectfully submitted,

MASSACHUSETTS HEALTH AND
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MASSDEVELOPMENT

By its attorneys,

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

RE: BOSTON EDISON COMPANY AND
COMMONWEALTH ELECTRIC
COMPANY PETITION FOR APPROVAL
OF RATE REDUCTION BONDS

D.T.E. 04-70

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Brief of the Agencies on the Boston Edison Company and Commonwealth Electric Company Petition upon all parties listed on the attached Service List in accordance with the requirements of 220 C.M.R. § 1.05(1) (Department's Rules of Practice and Procedure).

Dated this 10th day of December, 2004.

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